



Comptroller General
of the United States
Washington, D.C. 20548

Ashen
H43713

Decision

Matter of: Haworth, Inc.
File: B-241583.5
Date: April 23, 1991

James F. Nagle, Esq., Oles, Morrison & Rinker, for the protester.
David W. Smith, Forest Service, Department of Agriculture, for the agency.
David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

BIGGEST

1. Protest by original awardee against award to another quoter is denied where agency upon reevaluation properly determined that original evaluation was inconsistent with applicable evaluation procedures established by the Federal Supply Schedule for the procurement of systems furniture.
2. Concept of bid acceptance period does not apply under request for quotations (RFQ); a quotation received in response to an RFQ is not an offer and cannot be accepted by the government to create a binding contract.

DECISION

Haworth, Inc. protests the award by the Forest Service of a contract to Westinghouse Furniture Systems, under request for quotations (RFQ) No. R6-9-90-48, for systems furniture for the Olympic National Forest in Washington. Haworth, the original awardee under the solicitation, questions the reevaluation which led to the selection of Westinghouse and maintains that the agency instead should have resolicited its requirement.

We deny the protest.

The solicitation requested quotes for the design, manufacture and installation of workstations "in accordance with procedures established under: the [General Services Administration] Federal Supply Schedule [(FSS)] 71, Part II, Section E," the FSS category for systems furniture. The RFQ, issued to contractors on the schedule, advised offerors that award

would be made on the basis of the low, total weighted offer. The RFQ provided for calculating the low weighted offer by: (1) subtracting the offered percentage discount from the list price of the furniture; (2) multiplying the resulting discounted purchase price by the predetermined, standard FSS technical evaluation score for the proposed product line of furniture to determine a furniture weight factor, that is, an evaluation penalty expressed in dollars; (3) adding this factor to the purchase price to yield the weighted purchase price; (4) multiplying the proposed design and installation cost by a designer/installer evaluation score, calculated by the Forest Service on the basis of listed design and installation evaluation criteria, to determine a design/installation weight factor, that is, an evaluation penalty expressed in dollars; (5) adding this factor to the design/installation price to yield the weighted design/installation price; and (6) adding the weighted furniture purchase price to the weighted design/installation price to determine the total weighted offer.

Five quotes were received in response to the RFQ by the September 20, 1990, closing date. Based upon an evaluation of the quoted prices and the application of the two evaluation factors, the agency determined that Haworth's quote was "low." After three of the quoters, including Westinghouse, protested the ensuing September 28 award to Haworth, the Forest Service reexamined its evaluation and determined that it had misapplied the RFQ evaluation formula. Upon reevaluation, the Forest Service determined that Westinghouse had submitted the low quote. When the agency then terminated its contract with Haworth and made award to Westinghouse, on December 10, Haworth filed this protest with our Office.

Haworth first contends that Westinghouse's September 20 quote, which did not specify an acceptance period, had expired and therefore could not be accepted by the agency for award on December 10. Haworth argues that although the RFQ did not establish an acceptance period, a reasonable period should be implied; with respect to what constitutes a reasonable period, Haworth cites the standard Federal Acquisition Regulation (FAR) clause at FAR § 52.214-15, "Period for Acceptance of Bids," which sets 60 calendar days as the bid acceptance period unless the bidder indicates otherwise.


The FAR clause cited by Haworth governs the acceptance of bids. The procurement here was undertaken pursuant to an RFQ; a quotation received in response to an RFQ is not an offer and cannot be accepted by the government to create a binding contract. FAR § 15.402(e). Therefore, the concept of a bid acceptance period does not apply. In any case, the prompt filing of a protest against an award, as was done here by Westinghouse, generally has the effect of tolling expiration

of the protester's offer. See generally Phillips Cartner & Co., Inc., 69 Comp. Gen. 105 (1989), 89-2 CPD ¶ 492. Accordingly, even if Westinghouse's quote is analogized to an offer, its filing of a protest on October 17, 27 days after the closing date, would have tolled the expiration of any acceptance period.

As to the revised evaluation of quotes, as indicated above, the RFQ provided for the quoted price to be multiplied by the appropriate evaluation score expressed as a percentage. Thus, according to an example in FSS 71, where an offeror quotes a price of \$318,500 and receives an evaluation score of 20, the evaluation penalty is calculated by multiplying \$318,500 by 20 percent, for a result of \$63,700, which is added to the price to yield the weighted price of \$382,200. In its original evaluation, however, the Forest Service applied the design/installation evaluation score as a whole number rather than as a percentage. For example, Westinghouse received a design/installation evaluation score of 9 and proposed a design/installation cost of \$18,350. In the original evaluation, the agency computed a design/installation weight factor of \$161,150--\$18,350 times 9--to be added to the design/installation price. When, upon reevaluation, the Forest Service applied the evaluation score as a percentage, as provided for in FSS 71, the design/installation weight factor added to Westinghouse's price was reduced to \$1,651.50--\$18,350 times 9 percent.

As indicated above, applying the design/installation evaluation factor as a percentage resulted in evaluation of the Westinghouse quote as low. Although Haworth questions its displacement as the low quoter, we believe the Forest Service properly determined that the original evaluation was inconsistent with the applicable FSS 71 evaluation approach, and we find the reevaluation reasonable. Likewise, while Haworth suggests that the procurement was fatally flawed, the initial miscalculation has been corrected by the agency, and Haworth has identified no other deficiencies in the procurement which precluded making award. In these circumstances, we find no basis upon which to question the ultimate award to Westinghouse, the firm in line for award when the stated evaluation approach is correctly applied.

The protest is denied.


for James F. Hinchman
General Counsel